

Janice M. Bellucci, Esq., SBN 108911  
LAW OFFICES OF JANICE M. BELLUCCI  
235 East Clark Avenue, Suite C  
Santa Maria, California 93455  
Tel: (805) 896-7854  
Fax: (805) 349-8872  
JMBellucci@aol.com

Attorney for Plaintiff FRANK LINDSAY

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

FRANK LINDSAY, an individual,

Plaintiff,

vs.

CITY OF MURRIETA, an incorporated  
California Municipality; and DOES 1 to  
10, inclusive,

Defendants.

Case No.:

**VERIFIED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**[42 U.S.C. Section 1983]**

**INTRODUCTION**

1. This civil rights action challenges the entirety of Title 9, Chapter 9.25 of the City of Murrieta Municipal Code (the “Murrieta Residency Restrictions” or “the Ordinance”) in that, on their face and as applied, the Murrieta Residency Restrictions violate the Fifth and Fourteenth Amendments to the United States Constitution, the Ex Post Facto Clause of the United States Constitution, and are unconstitutionally vague and overbroad as more specifically alleged herein.

1                                   **JURISDICTION AND VENUE**

2           2.       This court has jurisdiction over this action under 28 U.S.C. Sections 1331,  
3 1343(a), and 2201, as well as pursuant to 42 U.S.C. Section 1983.

4           3.       Under 28 U.S.C. Section 1391(b), venue is proper in this Federal district  
5 because defendant is a municipality in this district and the events giving rise to the  
6 claims have occurred and continue to occur in this district.

7                                   **PARTIES**

8           4.       Plaintiff Frank Lindsay is and at all times material to this action was a  
9 resident of the State of California as well as a citizen of the United States. Plaintiff is  
10 required to register as a sex offender pursuant to Section 290 of the California Penal  
11 Code due to a conviction in 1979 involving a child and is not on parole or probation.  
12 Plaintiff conducts business within and near the City of Murrieta and desires to establish a  
13 lawful residence in that city but is prohibited from doing so due to the Ordinance,  
14 including but not limited to its penalties, which include incarceration and/or fines.

15           5.       The City of Murrieta (the “City” or “Defendant”) is an incorporated city  
16 located in Riverside County, California. The City adopted the City Ordinances at issue  
17 here through the five-member Murrieta City Council and enforces such ordinances  
18 through the Chief of Police of the City of Murrieta.

19           6.       The true names and capacities of Defendants sued as Does 1 through 10 are  
20 unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Plaintiff  
21 will seek leave to amend this Complaint, if necessary, to reflect the true names once they  
22 have been ascertained.

23           7.       The City and Does 1 through 10 are collectively referred to herein as  
24 “Defendants.”

25                                   **FACTS**

26           8.       The City Council of Murrieta adopted Ordinance 442 in 2010, which was  
27 subsequently codified as City of Murrieta Municipal Code, Title 9, Chapter 9.25,  
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1 Sections 9.25.010 through 9.25.060, entitled “Murrieta Sex Offender Residency  
2 Ordinance.” This Ordinance went into effect on or about October 19, 2010.

3 9. As enacted, the Ordinance prohibits sex offenders (hereinafter  
4 “Registrants”) from residing within a “prohibited location”, defined as areas “within two  
5 thousand (2,000) feet of the nearest property line of any” “child day care center, park, or  
6 school[,] and any location where residency is prohibited by California Penal Code  
7 section 3003.5.” Ordinance §§ 9.25.030-040.

8 10. The Ordinance defines a “child day care center” as a facility described in  
9 “section 16.44.050.A(3) of [the Murrieta Municipal] Code and shall not include small  
10 family day-care homes or large family day-care homes as defined at sections  
11 16.44.050.A(1) and (2).” *Id.* § 9.25.030. Section 16.44.050.A(3) of the Murrieta  
12 Municipal Code refers to “Child Day-care Centers (Fifteen (15) or More Children)” and  
13 related zoning provisions. Section 16.44.050.A(1) of the Murrieta Municipal Code  
14 defines “Small Family Day-care Homes” as those with “Eight or fewer children []  
15 Allowed within a single-family residence located in a residential zoning district, with no  
16 city land use permits or clearances required.” Section 16.44.050.A(2) of the Murrieta  
17 Municipal Code defines “Large Family Day-care Homes” as those with “Nine to  
18 fourteen (14) Children” [] Allowed within a single-family residence located in a  
19 residential zoning district . . . .”

20 11. The Ordinance defines a “Park” as “an open space intended for recreational  
21 use.” Ordinance § 9.25.030.

22 12. The Ordinance defines “School” as “the buildings and ground of any public  
23 or private school used for the education of children in kindergarten or in grades 1  
24 through 12, inclusive.” *Id.*

25 13. The Ordinance defines a “Sex Offender” as “any person for whom  
26 registration is required pursuant to Section 290 of the California Penal Code and for  
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1 whom registration is required as a result of a conviction involving an offense involving a  
2 child [*sic*], regardless of whether that person is on parole or probation.” *Id.*

3 14. The Ordinance defines “Child” as “a person under the age of eighteen (18)  
4 years.” *Id.*

5 15. On information and belief, the City adopted a map entitled “290 Restricted  
6 Areas,” which designates the “Protected Locations” under the Ordinance and outlines  
7 the 2,000-foot exclusion zones surrounding the property line of each Protected Location  
8 within which Registrants may not reside. This map is attached hereto as Exhibit A.

9 16. On information and belief, as evidenced by Exhibit A, over ninety percent  
10 (90%) of residential property in the City is included within the Murrieta Residency  
11 Restrictions. Of the five extreme ends of the City left untouched by the Murrieta  
12 Residency Restrictions, the majority of parcels are zoned for commercial use, office  
13 space, open space, or some other non-residential use.

14 17. The majority of the residential parcels that lie outside of the Murrieta  
15 Residency Restrictions are zoned for single-family homes and are not affordable.  
16 Significantly, on information and belief, the vast majority of affordable, multi-family  
17 parcels in the City are likewise included within the Murrieta Residency Restrictions and  
18 therefore unavailable to Registrants. On information and belief, approximately five  
19 percent (5%) of the multi-family housing in the City is potentially available to house  
20 Registrants under the Murrieta Residency Restrictions.

21 18. Upon information and belief, the multi-family housing left available to  
22 Registrants under the Murrieta Residency Restrictions is not affordable. In *In re Taylor*,  
23 the California Supreme Court considered \$850 per month to be the maximum monthly  
24 rate for “affordable” housing in the context of sex offender residency restrictions. 60  
25 Cal. 4th 1019, 1030 (2015). Upon information and belief, the median gross monthly rent  
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1 in Murrieta exceeds \$1,500.<sup>1</sup> Therefore, in order to comply with the Murrieta Residency  
2 Restrictions, virtually all Registrants cannot “reside” within the City of Murrieta because  
3 there is no affordable residential real estate available to them.

4 19. On information and belief, the Murrieta Residency Restrictions are at least  
5 as restrictive, if not more restrictive, than the residency restrictions ruled  
6 unconstitutional by the *Taylor* Court. For example, upon information and belief, the  
7 City’s population density is approximately 3,100 persons per square mile.<sup>2</sup> By  
8 comparison, the population density of San Diego County, California, which was  
9 considered by the *Taylor* court, is 680 persons per square mile,<sup>3</sup> indicating that the  
10 Murrieta Residency Restrictions have an even greater impact on the Registrant  
11 population than the residency restrictions struck down in *Taylor*.

12 20. The penalties for any violation of the Ordinance are significant and include  
13 a misdemeanor punishable “by a fine not exceeding one thousand dollars (\$1,000.00) or  
14 by imprisonment for a term not exceeding six months, or by both such fine and  
15 imprisonment.” Ordinance § 9.25.060; Murrieta Municipal Code § 1.32(B). The  
16 Murrieta Residency Restrictions further provide that “[a] person is guilty of a separate  
17 offense for each and every day during which a violation occurs.” Ordinance § 9.25.060  
18 (emphasis added).

19 21. By definition, the Murrieta Residency Restrictions do not apply to anyone  
20 who is not required to register as a sex offender pursuant to Penal Code section 290.

21 22. Furthermore, the Murrieta Residency Restrictions, by their terms, do not  
22 apply to Registrants who established a residence before the effective date of the  
23 Ordinance. Ordinance § 9.25.050(A). The Murrieta Residency Restrictions, by their  
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25 <sup>1</sup> <http://www.citv-data.com/citv/Murrieta-California.html#ixzz3nM98Bf3s>. See also Citv of Murrieta  
26 Official website. “Demographics”, at [http://www.murrieta.org/cityhall/ed/demographics.asp#.Vg7fl-](http://www.murrieta.org/cityhall/ed/demographics.asp#.Vg7fl-xViko)  
27 [xViko](http://www.murrieta.org/cityhall/ed/demographics.asp#.Vg7fl-xViko). (“Murrieta is a young, on-the-go affluent community” with an “average family income of over  
\$110,000.”)

<sup>2</sup> See <http://quickfacts.census.gov/qfd/states/06/0650076.html>.

<sup>3</sup> See <http://quickfacts.census.gov/qfd/states/06/06073.html>.

1 terms, also do not apply to Registrants who established a residence before the effective  
2 date of Section 3003.5(b) of the California Penal Code. *Id.* § 9.25.050(B). Finally, the  
3 Murrieta Residency Restrictions do not apply to Registrants who “established [their]  
4 residency prior to the initial operation of the prohibited location.” *Id.* § 9.25.050(C).  
5 Accordingly, Registrants who have maintained the same residence since the effective  
6 dates of either the Murrieta Residency Restrictions or Section 3003.5(b) of the California  
7 Penal Code are not subject to the Ordinance. However, a Registrant who seeks to move  
8 to from his/her original residence to a different residence within the City is subject to the  
9 Murrieta Residency Restrictions.

10 23. Plaintiff Frank Lindsay conducts business in and around the City of  
11 Murrieta and therefore wishes to relocate to that city. However, there is no location  
12 where Plaintiff can lawfully reside that is both available and affordable.

13 24. Because the City of Murrieta continues to enforce the Murrieta Residency  
14 Restrictions in a manner that prohibits Plaintiff and all Registrants convicted of a sex  
15 offense involving a child who currently reside outside of Murrieta from acquiring a  
16 residence in Murrieta, the Murrieta Residency Restrictions accomplish the  
17 unconstitutional goal of banishment, do not serve any legitimate government purpose,  
18 and are not appropriately tailored or related to any professed or lawful purpose.

19 25. Because the City of Murrieta continues to enforce the Murrieta Residency  
20 Restrictions in a manner that prohibits Registrants who already reside within Murrieta  
21 from moving to a new residence within that city, the Murrieta Residency Restrictions  
22 accomplish the unconstitutional goal of banishment, do not serve any legitimate  
23 government purpose, and are not appropriately tailored or related to any professed or  
24 lawful purpose.

25 26. California’s Proposition 83, also known as “Jessica’s Law” (effective  
26 November 6, 2006), as codified in subsections (b) and (c) of California Penal Code  
27 Section 3003.5, authorizes local governments to enact ordinances that further restrict the  
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1 residency of any Registrant provided they are consistent with the constitutions of the  
2 United States and the State of California. (See California Penal Code § 3003.5 (c).)  
3 However, the California Supreme Court has ruled that residency restrictions may not be  
4 imposed upon sex offenders in a manner that deprives them of their constitutional rights  
5 and liberty interests, including their right to be free from arbitrary, oppressive, and  
6 unreasonable laws that bear no rational relationship to the state's goal of protecting  
7 residents. *In re Taylor*, 60 Cal. 4th 1019, 1042 (2015).

8 27. The Murrieta Residency Restrictions subject Registrants in the City to  
9 arbitrary, oppressive, and unreasonable governmental action in that they are blanket  
10 proscriptions applied to all affected Registrants without regard to the particularized  
11 circumstance of each individual. See *Taylor*, 60 Cal. 4th at 1042.

12 28. The Murrieta Residency Restrictions bear no rational relationship to any  
13 legitimate governmental purpose in that they contradict and hamper the objectives of  
14 Jessica's Law; fail to protect the public; and deprive Registrants of stable homes, family  
15 support, social and medical services, and other means necessary to live productive, law-  
16 abiding lives. See *Taylor*, 60 Cal. 4th at 1042 (Blanket enforcement of residency  
17 restrictions "cannot survive rational basis scrutiny because it has hampered efforts to  
18 monitor, supervise, and rehabilitate [Registrants] in the interests of public safety, and as  
19 such, bears no rational relationship to advancing the state's legitimate goal of protecting  
20 children . . ."). See also *Doe v. City of Lynn*, SJC-11822, 2015 Mass. LEXIS 620, at  
21 \*18 & n.15 (Aug. 28, 2015) (As a supervised and stable home has been recognized as a  
22 factor that minimizes the sex offender's risk of reoffense, th[e] disruption [imposed by  
23 residency restrictions] is inconsistent with the Legislature's goal of protecting the  
24 public." (citing *In re Taylor*, 60 Cal. 4th 1019 (2015))). This consensus is also  
25 manifested by the very agency charged with setting sex offender policy in California.  
26 See Generally CALIFORNIA SEX OFFENDER MANAGEMENT BOARD, HOMELESSNESS  
27 AMONG CALIFORNIA'S REGISTERED OFFENDERS – AN UPDATE (Aug. 2011), at 26  
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1 (“CONCLUSIONS. Based on all that is known about sex offender recidivism and the  
2 nature of most sex offenses involving children, there is no evidence that residency  
3 restrictions are related to preventing or deterring sex crimes against children. To the  
4 contrary, the evidence strongly suggests that residency restrictions are likely to have the  
5 unintended effect of increasing the likelihood of sexual re-offense.”).<sup>4</sup>

6 29. Defendant has expended, is expending, and/or will expend public funds on  
7 enforcing, preparing to enforce, and/or attempting to enforce the Murrieta Residency  
8 Restrictions. Defendant has a mandatory duty to refrain from expending public funds on  
9 enforcing, preparing to enforce, and/or attempting to enforce the Murrieta Residency  
10 Restrictions because they are invalid and unconstitutional.

11 30. In addition, while the Murrieta Residency Restrictions do not by their terms  
12 impose burdens on persons other than Registrants, the Murrieta Residency Restrictions,  
13 as applied, may impose the burdens upon family members of Registrants and upon  
14 others who reside with or wish to reside with Registrants, with the exceptions as  
15 previously defined.

16 31. Defendant lacks either a compelling or substantial legitimate governmental  
17 interest in restraining the civil liberties of Registrants in the manner expressly provided  
18 by the Murrieta Residency Restrictions.

19 32. In addition, the Murrieta Residency Restrictions are not the least restrictive  
20 means to further any compelling or substantial governmental interest, and specifically to  
21 protect children as the Murrieta Residency Restrictions purport.

22 33. Further, the Murrieta Residency Restrictions fail to pass constitutional  
23 muster because their restrictions are not sufficiently narrowly tailored to serve a  
24 legitimate government interest.

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28 <sup>4</sup> [http://www.casomb.org/docs/Residence\\_Paper\\_Final.pdf](http://www.casomb.org/docs/Residence_Paper_Final.pdf).



34. The Murrieta Residency Restrictions are overly broad and burdens substantially more constitutionally protected conduct than is necessary to further any legitimate governmental interest.

35. The Murrieta Residency Restrictions are vague and fail to provide sufficient notice of the conduct prohibited or allowed by Registrants so that they may conform their conduct to the requirements of the law and thereby prevent arbitrary and discriminatory enforcement.

36. Finally, the Murrieta Residency Restrictions are an arbitrary, politically motivated act imposed by a local government in response to popular sentiments, based upon misinformation, which seeks retribution against Registrants who constitute a socially outcast minority. The Murrieta Residency Restrictions also lend themselves to discriminatory enforcement as well as the suppression of the constitutional rights of Registrants as well as individuals who travel with them, including spouses and family members.

37. For the reasons stated above, the Murrieta Residency Restrictions are in violation of the First, Fifth and Fourteenth Amendments, the Ex Post Facto Clause of the United States Constitution, and are unconstitutionally vague.

## FIRST CLAIM

**(42 U.S.C. § 1983 – Fifth Amendment)**

38. Plaintiff re-alleges paragraphs 1 through 37 of this Complaint as though fully set forth herein.

39. By leaving in place, enforcing, and/or threatening to enforce the Murrieta Residency Restrictions, Defendant deprives Plaintiff and other Registrants of rights guaranteed by the Fifth Amendment of the United States Constitution, including the rights to life, liberty, property, familial association and due process of law. Defendant commits these unconstitutional acts under color of authority of law.

40. Continued enforcement or threats of enforcement of the Murrieta Residency Restrictions violate the rights of Plaintiff and the rights of other Registrants, which are protected by the Fifth Amendment of the United States Constitution. Therefore, the Murrieta Residency Restrictions are void, both facially and as applied, and should be enjoined and their previous enforcement nullified. The injuries Plaintiff is suffering as a result of the actions of Defendants, and each of them, are severe, irreparable, and ongoing. Immediate and permanent injunctive relief is necessary to halt and prevent further occurrence of these ongoing constitutional deprivations and infliction of irreparable harm.

## SECOND CLAIM

**(28 U.S.C. §1983 – Fourteenth Amendment)**

41. Plaintiff re-alleges paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. By leaving in place, enforcing, and/or threatening to enforce the Murrieta Residency Restrictions, Defendant deprives Plaintiff and other Registrants of rights guaranteed by the Fourteenth Amendment of the United States Constitution, including the Substantive Due Process and Equal Protection Clauses as well as the rights to family autonomy, privileges and immunities, and the right to travel. Defendant commits these unconstitutional acts under color of authority of law.

43. Continued enforcement or threats of enforcement of the Murrieta Residency Restrictions violates the rights of Plaintiff and other Registrants which are protected by the Fourteenth Amendment of the United States Constitution. Therefore, the Murrieta Residency Restrictions are void, both facially and as applied, and should be enjoined and their previous enforcement nullified. The injuries Plaintiff is suffering as a result of the actions of Defendants, and each of them, are severe, irreparable, and ongoing. Immediate and permanent injunctive relief is necessary to halt and prevent further

1 occurrence of these ongoing constitutional deprivations and infliction of irreparable  
2 harm.

3 **THIRD CLAIM**

4 **(28 U.S.C. § 1983 – Ex Post Facto Clause)**

5 44. Plaintiff re-alleges paragraphs 1 through 43 of this Complaint as though  
6 fully set forth herein.

7 45. By leaving in place, enforcing, and/or threatening to enforce the Murrieta  
8 Residency Restrictions, Defendant deprives Plaintiff and other Registrants of rights  
9 guaranteed by the Ex Post Facto Clause of the United States Constitution. Defendant  
10 commits these unconstitutional acts under color of authority of law.

11 46. Continued enforcement or threats of enforcement of the Murrieta Residency  
12 Restrictions violates the rights of Plaintiff and the rights of other Registrants which are  
13 protected by the Ex Post Facto Clause of the United States Constitution. Therefore, the  
14 Murrieta Residency Restrictions are void, both facially and as applied, and should be  
15 enjoined and their previous enforcement nullified. The injuries Plaintiff is suffering as a  
16 result of the actions of Defendants, and each of them, are severe, irreparable, and  
17 ongoing. Immediate and permanent injunctive relief is necessary to halt and prevent  
18 further occurrence of these ongoing constitutional deprivations and infliction of  
19 irreparable harm.

20 **FOURTH CLAIM**

21 **(28 U.S.C. § 1983 – Void for Vagueness)**

22 47. Plaintiff re-alleges paragraphs 1 through 46 of this Complaint as though full  
23 set forth herein.

24 48. By leaving in place, enforcing, and/or threatening to enforce the Murrieta  
25 Residency Restrictions, Defendant unconstitutionally enforces an ordinance that  
26 deprives Plaintiff and other Registrants of rights which are protected by the Void for  
27 Vagueness Doctrine extended into the Due Process Clauses of the Fifth and Fourteenth  
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1 Amendments of the United States Constitution. Therefore, the Murrieta Residency  
2 Restrictions are void, both facially and as applied, and should be enjoined and their  
3 previous enforcement nullified. The injuries Plaintiff suffers as a result of the actions of  
4 Defendants, and each of them, are severe, irreparable, and ongoing. Immediate and  
5 permanent injunctive relief is necessary to halt and prevent further occurrence of these  
6 ongoing constitutional deprivations and infliction of irreparable harm.

7 **FIFTH CLAIM**

8 **(28 U.S.C. §2201 – Declaratory Relief)**

9 49. Plaintiff re-alleges paragraphs 1 through 51 of this Complaint as though  
10 fully set forth herein.

11 50. An actual controversy exists between Plaintiff and Defendant regarding the  
12 constitutionality and enforceability of the Murrieta Residency Restrictions.

13 51. Plaintiff is entitled to a declaration of his rights with regard to the Murrieta  
14 Residency Restrictions.

15 **PRAYER FOR RELIEF**

16 Because of the actions alleged above, Plaintiff seeks judgment against Defendant  
17 as follows:

18 a. That Defendant be enjoined in perpetuity from enforcing Title 9, Chapter  
19 9.25 of the City of Murrieta Municipal Code;

20 b. That Title 9, Chapter 9.25 of the City of Murrieta Municipal Code be  
21 declared null and void as unconstitutionally vague and in violation of the Fifth and  
22 Fourteenth Amendments of the United States Constitution, the Ex Post Facto Clause of  
23 the United States Constitution, and Article XI, Section 7 of the California Constitution;  
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1 c. That Plaintiff recover from the Defendant, under 42 U.S.C. Section 1988,  
2 all of Plaintiff's reasonable attorney's fees, costs and expenses of this litigation; and

3 d. That Plaintiff recovers such relief as the Court deems just and proper.  
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6 Dated: October 6, 2015

LAW OFFICES OF JANICE M. BELLUCCI

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8 By: /s/ Janice M. Bellucci  
9 Janice M. Bellucci  
10 Attorney for Plaintiff  
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